# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 6637 of 1988

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**HARIBHAI MOTILAL PATEL SINCE DECEASED NO HEIRS & 4 - Petitioner(s)**

**Versus**

**COMPETENT AUTHORITY AND DY. COLLECLTOR & 1 - Respondent(s)**

==========

**Appearance :**

MR PM BHATT for Petitioner(s) : 1 - 2,2.2.1 - 3, 3.2.1, 3.2.2,3.2.3 - 5,5.2.1

MR. P.D.BHATE, LEARNED AGP for Respondent(s) : 1 - 2.

==========

**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 31/08/2005**

**ORAL JUDGMENT**

1.In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Competent

Authority and the Deputy Collector, Urban Land Tribunal, Unit No.5, Vadodara dated 12.3.84 in declaring 22557 sq. mtr. land as excess vacant land as well as the order passed by the Urban Land Tribunal dated 13.5.1986 passed in Appeal No. Baroda 18/85.

2. The main grievance, which is voiced in the present Special Civil Application is that the Appellate Authority under Section 33 of the Urban Land Ceiling Act has no jurisdiction to dismiss the appeal for default and therefore, to decide the appeal on merits. It appears from the record that being aggrieved and dissatisfied with the order passed by the Competent Authority, ULC, Vadodara, the original land owner preferred an appeal under Section 33 of the Urban Land Ceiling Act before the Urban Land Tribunal, Vadodara being Appeal No. Baroda 18/85 and the same came to be dismissed for default by the Urban Land Tribunal on the ground that when the matter was called out neither the appellants nor their advocate was present, though served. Considering the judgment of the learned Singal Judge of this Court in case of *Jashbhai Somabhai Patel V/s. Competent Authority & Deputy Collector & Another* reported in *1986 G.L.H. (U.J.)42 page 45,* the order

passed by the Urban Land Tribunal dismissing the said appeal for default cannot be sustained. The learned Singal Judge of this Court, considering the provision of Section 33 of the Act and relying upon one another judgment, has held that the Appellate Authority while deciding the Appeal under Section 33 of the Act has no jurisdiction to dismiss the appeal for non-appearance of the parties and the authority is required to determine the appeal on merits even in absence of the appellants or appellants' advocate. In that view of the matter, the order passed by the Urban Land Tribunal cannot be sustained and the same is required to be quashed and set aside and the matter is required to be remanded to the Urban Land Tribunal for deciding the same afresh in accordance with law and on merits. It appears that during the pendency of the present Special Civil Application in view of the Repeal Act and subsequent developments Smt. Vilasini Ramchandra, IAS, Secretary (Appeals), Revenue Department is appointed to be Urban Land Tribunal and therefore, now the appeal is required to be heard by the said authority.

3. For the reasons stated above, the petition succeeds in part. The order passed by the Urban Land Tribunal dated

13.5.86 passed in Appeal No.Baroda 18/85 is hereby quashed and set aside and the matter is remanded to the Urban Land Tribunal for deciding the said appeal afresh in accordance with law and on merits after hearing all the concerned parties and the heirs of the original land owner whose particulars are given in the present Special Civil Application by way of amendment. In the mean time, the parties are directed to maintain status-quo as according to the State Government, they have already taken over the possession long back and the State Government is in possession of the land in question.

4.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.